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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re SEAN C., a Person Coming Under the
Juvenile Court Law.

B241648
(Los Angeles County Super. Ct.
No. CK31007)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

THOMAS C.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert Stevenson, Juvenile Court Referee. Affirmed in part and dismissed in part.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Senior Associate County Counsel, for Plaintiff and Respondent.

Thomas C. (father) appeals from the dependency court's judgment of March 23, 2012, declaring his son, Sean, a dependent of the court under Welfare and Institutions Code section 300, subdivision (b)¹ and ordering Sean removed from his custody. Father contends substantial evidence does not support the jurisdictional finding that he placed the child at risk of harm or the order removing the child from his custody. We conclude substantial evidence supports the jurisdictional finding. As Sean was subsequently returned to father's custody, the contention concerning the removal order is moot. Accordingly, we affirm the judgment and dismiss the appeal of the removal order.

STATEMENT OF FACTS AND PROCEDURE

Sean was born in October 2011 with opiates and marijuana in his system to father² and Amber R. (mother), who had a ten-year relationship. Sean exhibited severe drug withdrawal symptoms, which lasted for six weeks. The Department of Children and Family Services (Department) detained him from parental custody and filed a section 300 petition. On December 7, 2011, at the detention hearing, the dependency court released Sean to father's custody under Department supervision, ordered father to participate in weekly drug testing, and ordered the Department to provide family maintenance services.

Father was a frequent user of prescription codeine and morphine. He "always has a prescription." Although it was denied by father, he had a long history of abusing drugs and had drug-related and other convictions.³ An older daughter by a different mother

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² The dependency court found father to be Sean's presumed father. (CT 48)~

³ Father was convicted in 2008 of driving under the influence/driving while license suspended. In 2006, he suffered two convictions of use/under the influence of controlled substance. In 2002, he was convicted of possession of controlled substance and evading a peace officer. In 1996, he was convicted of violation of a domestic violence order. In 1995, he was convicted of possession or sale of a switch blade knife.

was born in 2002 with opiates in her system, father failed to reunite with her, and his parental rights were terminated. In that case, father did not cooperate with services and subsequently did not address the issues that lead to the loss of his parental rights.

Mother had a long history of abusing drugs. She used heroin during the pregnancy until shortly before Sean was born, when she entered a methadone program. Father falsely denied knowing mother used heroin during the pregnancy. He hindered her progress in the methadone program and persuaded her not to go into residential treatment as recommended by her counselor.

Father was married to another woman,⁴ with whom he had a child, but he refused to provide his wife's identity or contact information and falsely denied he was still in a relationship with her. He falsely denied he was in a continuing relationship with mother.

Sean was deemed high risk developmentally. He required monthly visits to the pediatrician and a developmental follow-up to determine if further referrals were necessary.

Father did not cooperate with the Department's efforts to secure Sean's safety and preserve Sean's family ties. During the period of time when Sean was in his care, he refused to make Sean available to the social worker for an assessment of this special needs infant's safety and well-being, refused to cooperate with the social worker's efforts to communicate with him, and refused to reveal where he and Sean lived or the identity of Sean's doctor. Father failed to drug test on December 8 and December 15, 2011, and, on January 4, 2012, he tested positive for codeine and morphine. Father had prescriptions from his dentist dated December 20, 22, 23, and 28, 2011, for Tylenol #3, Vicodin (which contains hydrocodone), codeine, and hydrocodone. Codeine can give a positive test for morphine. On January 9, 2012, father obtained a letter from a dentist stating father would be receiving treatments over the next seven to nine weeks to restore teeth.

⁴ He concealed this marriage, which was of 25 years duration, from mother. He concealed Sean's dependency case from his wife. He worked for his father-in-law.

On January 10, 2012, the court detained Sean from father's custody, because father violated the order for weekly drug testing, tested positive for opiates, failed to cooperate with the Department, and failed make Sean available to the social worker. Father was granted monitored visits.

A first amended petition was filed on January 20, 2012, to add allegations the child was at risk of harm due to father's substance abuse problems. Father believed Sean's detention from his care was detrimental to Sean, the Department's concerns for Sean's safety were "bullshit," and the case was a "set up."

On February 1, 2012, father tested positive for codeine and morphine. On February 6, 2012, he received a prescription for Tylenol III. On February 13, 2012, he tested positive for codeine and morphine. On March 12, 2012, he tested negative for all substances.

On March 23, 2012, Sean was declared a dependent of the court under section 300, subdivision (b), based on sustained allegations, as to father: father has a history of substance abuse and is a frequent user of prescription medication including codeine and morphine; father has a criminal history of convictions of drug-related offenses; and father's substance abuse problems remain unresolved. The dependency court found: "[Father] has been gaming this case ever since it came in. I think he is the kind of individual that is untruthful, that he only says things that he thinks will benefit him. He gamed me. I released the child to him at the beginning of this case and then there had to be a detention of the child because you were not being available to the social worker. Nobody knew, quite, where you were living, whom you were living with. And then I read this report and the mother says that you always have prescriptions. [¶] I don't find you credible, and I don't find your doctor or your dentist, whoever this person is, D.M.D. or D.D.S. with these prescriptions and the letter to be credible. I give them very little weight at all. . . . [T]here is really no substance behind them. [¶] Father . . . provided some information to the social worker about the [dental] procedure he had . . . , but, again, we don't have a copy of that. If this was a big deal for the father to support his reasons for having the prescription medication that he has from this individual, he

should have supported the need for that with respect to the massive dental work that he had done. [¶] So, again, I'm not finding the father credible. I haven't found him credible throughout this case It's not only a criminal history conviction. There is proof . . . that the father has abused substance[s] through prescriptions. Mother had indicated he always has prescriptions. [¶] I think the father, again, has attempted to mislead the court, and I just don't, quite frankly, believe a thing he says."

Custody was taken from the parents, the Department was ordered to provide family reunification services, monitored visits were granted, and father was ordered to participate in individual counseling and weekly drug testing.

DISCUSSION

The Jurisdictional Finding is Supported by Substantial Evidence

Father contends substantial evidence does not support the jurisdictional findings. We disagree with the contention.

In determining whether substantial evidence supports the factual findings, "all intendments are in favor of the judgment and [we] must accept as true the evidence which tends to establish the correctness of the findings as made, taking into account as well all inferences which might reasonably have been drawn by the trial court." (*Crogan v. Metz* (1956) 47 Cal.2d 398, 403-404.) "[The] [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could [make the findings made]." [Citations.] (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) "[I]ssues of fact and credibility are the province of the trial court. [Citation.]" (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

"We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court." (*In re Matthew S., supra*, 201 Cal.App.3d at p. 321.) If supported by substantial evidence, the

judgment or finding must be upheld, even though substantial evidence may also exist that would support a contrary judgment and the dependency court might have reached a different conclusion had it determined the facts and weighed credibility differently. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Thus, the pertinent inquiry when a finding is challenged on sufficiency of the evidence grounds is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*Ibid.*)

Section 300, subdivision (b) describes in pertinent part a child who has suffered, or is a substantial risk of suffering, “serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s . . . substance abuse.” “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) The purpose of the juvenile court law is to provide “maximum safety and protection for children” being harmed or who are at risk of harm. (§ 300.2.) “The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.” (*Ibid.*)

The opiates morphine, codeine, and hydrocodone are Schedule II controlled substances. (Health & Saf., § 11055, subds. (b)(1)(G), (I), (L).)

Father does not dispute he used opiates. Substantial evidence supports the conclusion he currently abused them and used them illegally. There was evidence he always had a prescription for opiates, an indicator he abused prescription drugs. It is reasonable to infer from his failure to submit to drug testing December 8 and 15, 2011 and his failure to produce prescriptions covering those dates that he was using controlled substances without a prescription, which is illegal drug use. The facts he tested positive for opiates and obtained four prescriptions for opiates from his dentist within a single

month indicates he was abusing prescription drugs. The dependency court did not believe father's denials and excuses. The letter he produced from his dentist dated January 9, 2012, which described future dental treatment, did not provide an explanation for his use of opiates prior to that date, and in any event, was not credible.

Father does not dispute he had a history of drug-related convictions. There is evidence he did not participate in drug rehabilitation or address his drug abuse issues. He minimized and denied his drug problem. It is reasonable to infer from these facts that father's drug addiction remained unresolved.

There is evidence father knew mother used heroin during the pregnancy and obstructed her efforts to get and stay clean. Sean is his second child he did not protect from the harmful effects of the child's mother's drug use. Sean experienced drug withdrawal symptoms for six weeks and was at high risk of further complications. This constitutes substantial evidence Sean suffered and was at risk of suffering serious harm from father's failure to protect him from prenatal exposure to dangerous drugs. The evidence father obstructed the Department's efforts to ensure Sean's safety and welfare and believed Sean's need for outside supervision was "bullshit" indicates father will continue to fail to protect Sean from the risk of harm.

Father suffered numerous felony convictions relating to his drug abuse. It is reasonable to conclude from his continued illegal drug use and denial he has a drug problem that he will continue to suffer criminal convictions, which creates a risk to the child of caretaker absence.

The foregoing evidence of father's past and current illegal drug use, current prescription drug abuse, drug-related criminal history, denial of his drug use and criminal history, lack of rehabilitation, and obstruction of efforts to secure Sean's protection amply supports the allegations sustained by the dependency court. Father's contention that his current use of prescription drugs does not mean he has an unresolved drug problem or is unable to provide regular care is but a request we reweigh the evidence, which we will not do. We conclude substantial evidence supports the findings under section 300, subdivision (b).

Father's Challenge to the Removal Order Is Moot

Father contends the order removing Sean from his physical custody under section 361, subdivision (c)(1)⁵ must be reversed, because substantial evidence does not support the findings Sean was at substantial risk of harm in father's custody and there were no reasonable means to protect Sean without removal. On October 15, 2012, we received additional evidence that, on August 17, 2012, the dependency court terminated the March 23, 2012 suitable placement order and placed Sean in home-of-parent-father under Department supervision, with father to take on-demand drug tests and the Department to make unannounced home visits. (Order, filed 10/15/2012.)

The Department moved to dismiss father's challenge to the removal order on the ground of mootness. Father did not oppose the motion. As Sean was subsequently returned to father's care, any ruling by this court concerning the March 23, 2012 removal order will have no practical impact. (See *Carson Citizens for Reform v. Kawagoe* (2009) 178 Cal.App.4th 357, 364 [“A case is moot when any ruling by this court can have no practical impact or provide the parties effectual relief. [Citation.]’ [Citation.]”]; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1489-1490; *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.) Accordingly, father's contention is moot.

⁵ Section 361 provides in pertinent part: “(c) A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence[:] [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody.”

DISPOSITION

The judgment is affirmed. The appeal of the March 23, 2012 removal order is dismissed as moot.

KRIEGLER, J.

We concur:

TURNER, P. J.

FERNS, J.*

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.